



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

J THOMAS DILGER JR MD  
6718 MONTAY BAY DRIVE  
SPRING TX 77389

#### **Carrier's Austin Representative Box**

Box Number 54

#### **Respondent Name**

TEXAS MUTUAL INSURANCE CO

#### **MFDR Date Received**

May 11, 2009

#### **MFDR Tracking Number**

M4-09-8082-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Designated Doctor Exam"

**Amount in Dispute:** \$925.00

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Texas Mutual denied this treatment in this dispute due to untimely filing. According to DWC Rule 134.801; Effective 9/1/2005, a health care provider must submit a medical bill to the insurance carrier on or before the 95<sup>th</sup> day after the date of service. Failure to timely submit the medical bill constitutes a forfeiture of the health care provider's right to reimbursement. To be compliant with DWC Rule 134.801; the requestor had until 11/1/08 to file their services with this carrier. Texas Mutual did not receive the complete medical bill from the requestor until 1/12/09;...which by that time the filing deadline had lapsed. The requestor does not include any verifiable documentation to support its complete medical bill was timely filed with the insurance carrier...Texas Mutual has no record of receipt of a complete medical bill received prior to on or before the 95<sup>th</sup> day after the date of service (which is 11/1/08); therefore, it is Texas Mutual's position that the service in dispute was untimely filed. Texas labor Code, Section 408.027, and Division rule 133.20 require a health care provider to submit a medical bill by the 95<sup>th</sup> day following the date of service or forfeit their right to reimbursement. The 95<sup>th</sup> day following the date of service, consistent with rule 133.20, passed on 11/1/08. Section 408.027 strongly states in part, 'A health care provider waives any right to payment unless a medical bill is submitted to the insurance carrier on or before the 95<sup>th</sup> day after the date of service.' And at subsection (a) it says, 'failure to timely submit a medical bill constitutes a forfeiture of the provider's right to reimbursement for that bill.' To be compliant with DWC Rule 133.20 the complainant had until 11/1/08 to submit its bill. Given the above, Texas Mutual believes no payment is due for the service listed in this dispute."

**Response Submitted by:** Texas Mutual Insurance Company, 6210 E. Highway 290, Austin, TX 78723

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
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July 29, 2008	99456-W5	\$350.00	\$350.00
	99456-W5	\$300.00	\$300.00
	99456-W5	\$150.00	\$150.00
	96118	\$125.00	\$125.00
TOTAL		\$925.00	\$925.00

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for health care providers to pursue a medical fee dispute.
2. 28 Texas Administrative Code §133.20 sets out the procedures for health care providers to submit workers' compensation medical bills for reimbursement.
3. 28 Texas Administrative Code §102.4 sets out the rules for Non-Commission Communications.
4. Texas Labor Code §408.027 sets out the rules for timely submission of a claim by a health care provider.
5. Texas Labor Code §408.0272 sets out the rules for certain exceptions for untimely submission of a claim by a health care provider.
6. 28 Texas Administrative Code §134.204 sets out the fee guidelines for the reimbursement of workers' compensation specific codes, services and programs provided on or after March 1, 2008.
7. 28 Texas Administrative Code §134.203 sets out reimbursement guidelines for medical professional services provided on or after March 1, 2008.
8. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated February 3, 2009

- CAC-29 – THE TIME LIMIT FOR FILING HAS EXPIRED.
- CAC-47 – THIS (THESE) DIAGNOSIS (ES) IS (ARE) NOT COVERED, MISSING, OR ARE INVALID.
- CAC-97 – THE BENEFIT FOR THIS SERVICE IS INCLUDED IN THE PAYMENT/ALLOWANCE FOR ANOTHER SERVICE/PROCEDURE THAT HAS ALREADY BEEN ADJUDICATED.
- 217 – THE VALUE OF THIS PROCEDURE IS INCLUDED IN THE VALUE OF ANOTHER PROCEDURE PERFORMED ON THIS DATE.
- 731 – 134.801 & 133.20 PROVIDER SHALL NOT SUBMIT A MEDICAL BILL LATER THAN THE 95<sup>TH</sup> DAY AFTER THE DATE OF SERVICE, FOR SERVICE ON OR AFTER 9/1/05.
- 892 – DENIED IN ACCORDANCE WITH DWC RULES AND/OR MEDICAL FEE GUIDELINE.
- 907 – NOT ALL DIAGNOSES SUBMITTED ARE RELATED TO THE COMPENSABLE INJURY, ONLY TREATMENT RENDERED FOR THE COMPENSABLE INJURY IS REIMBURSABLE.

Explanation of benefits dated February 24, 2009

- CAC-W4 – NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER REVIEW OF APPEAL/RECONSIDERATION.
- CAC-29 – THE TIME LIMIT FOR FILING HAS EXPIRED.
- CAC-47 – THIS (THESE) DIAGNOSIS (ES) IS (ARE) NOT COVERED, MISSING, OR ARE INVALID.
- CAC-97 – THE BENEFIT FOR THIS SERVICE IS INCLUDED IN THE PAYMENT/ALLOWANCE FOR ANOTHER SERVICE/PROCEDURE THAT HAS ALREADY BEEN ADJUDICATED.
- 217 – THE VALUE OF THIS PROCEDURE IS INCLUDED IN THE VALUE OF ANOTHER PROCEDURE PERFORMED ON THIS DATE.
- 731 – 134.801 & 133.20 PROVIDER SHALL NOT SUBMIT A MEDICAL BILL LATER THAN THE 95<sup>TH</sup> DAY AFTER THE DATE OF SERVICE, FOR SERVICE ON OR AFTER 9/1/05.
- 892 – DENIED IN ACCORDANCE WITH DWC RULES AND/OR MEDICAL FEE GUIDELINE.
- 907 – NOT ALL DIAGNOSES SUBMITTED ARE RELATED TO THE COMPENSABLE INJURY, ONLY TREATMENT RENDERED FOR THE COMPENSABLE INJURY IS REIMBURSABLE.

#### **Issues**

1. Did any of the exceptions listed in Texas Labor Code §408.0272 apply to the medical services in dispute?
2. Did the requestor submit documentation to support the disputed bills were submitted timely in accordance with Texas Labor Code, Section §408.027 and 28 Texas Administrative Code §102.4?
3. The carrier has addressed issue of compensability for the claim. How does this affect a Designated Doctor

(DD) examination requested by the Division?

4. Has the Designated Doctor (DD) examination been reimbursed appropriately per 28 Texas Administrative Code §134.204?
5. Is the requestor entitled to reimbursement for the disputed services?

### **Findings**

1. 28 Texas Administrative Code §133.20(b) states, in pertinent part, that, except as provided in Texas Labor Code §408.0272, “a health care provider shall not submit a medical bill later than the 95<sup>th</sup> day after the date the services are provided.” No documentation was found to support that any of the exceptions described in Texas Labor Code §408.0272 apply to the services in this dispute. For that reason, the requestor in this dispute was required to submit the medical bill not later than 95 days after the date the disputed services were provided.
2. Texas Labor Code §408.027(a) states, in pertinent part, that “Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment.” 28 Texas Administrative Code §102.4(h) states that “Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on: (1) the date received, if sent by fax, personal delivery, or electronic transmission or, (2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday.” The requestor alleges that the medical bill was initially submitted to the insurance company on August 5, 2008. Review of the requestor's submitted documentation finds a copy of a facsimile confirmation report to Texas Mutual Insurance Company, facsimile number 512-224-3889 on August 5, 2008, a copy of a medical bill with printed date August 2, 2008 and a copy of the DWC 69 form, in support of its position that the medical bills were sent to Texas Mutual Insurance Company in a timely manner. Per 28 Texas Administrative Code §102.4(h) documentation found sufficiently supports that the requestor submitted a bill to the insurance carrier within 95 days from the date the services were provided. In accordance with Texas Labor Code §408.027, the Requestor has timely submitted a bill to the respondent. Therefore, the disputed services will be reviewed in accordance with 28 Texas Administrative Code §§134.204 and 134.203.
3. On the EOBs dated February 3, 2009 and February 24, 2009, the respondent denied reimbursement based upon “CAC-47 – THIS (THESE) DIAGNOSIS (ES) IS (ARE) NOT COVERED, MISSING, OR ARE INVALID”; and “907 – NOT ALL DIAGNOSES SUBMITTED ARE RELATED TO THE COMPENSABLE INJURY, ONLY TREATMENT RENDERED FOR THE COMPENSABLE INJURY IS REIMBURSABLE.” Texas Labor Code §408.0041 states in part (a)(1)
  - (a) At the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:
    - (1) The impairment caused by the compensable injuryTexas Labor Code §408.0041 states in part (h)(1)
  - (h) The insurance carrier shall pay for:
    - (1) An examination required under Subsection (a) or (f).

The completion of a Designated Doctor examination requested by the Division is payable per the above statute and is not subject to the status of the claim.

4. Per 28 Texas Administrative Code §134.204 reimbursement is as follows:

CPT code 99456-W5: Per 28 Texas Administrative Code §134.204(j)(3)(C), the Maximum Allowable Reimbursement (MAR) for the billing and reimbursement of the Maximum Medical Improvement (MMI) Examination is \$350.00.

CPT code 99456-W5: Per 28 Texas Administrative Code §134.204(j)(4)(C)(ii)(II)(a), the Maximum Allowable Reimbursement (MAR) for the billing and reimbursement of the Impairment Rating (IR) using the Range of Motion method for the musculoskeletal body area (upper extremity) is \$300.00.

CPT code 99456-W5: Per 28 Texas Administrative Code §134.204(j)(4)(D)(v), the Maximum Allowable Reimbursement (MAR) for the billing and reimbursement of the Impairment Rating (IR) using the Range of Motion method for the non-musculoskeletal body area (upper extremity nervous system) is \$150.00.

Per 28 Texas Administrative Code §134.203 reimbursement is as follows:

CPT code 96118: Reimbursement is recommended in the amount of \$148.15 (52.83 WC CF/38.087 Medicare CF x 106.81 Participating amount). The requestor is seeking \$125.00. This amount is recommended.

5. The respondent has previously reimbursed the amount of \$0.00 for the disputed services. Therefore, the requestor is due a recommended reimbursement in the amount of \$925.00.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that reimbursement is due. As a result, the amount ordered is \$925.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$925.00 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

_____ Signature	_____ Medical Fee Dispute Resolution Officer	July 26, 2012 Date
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### ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**